

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

WALTER RAYMOND OPIOLA,

Case No. 15-CV-3128 (PAM/TNL)

Plaintiff,

v.

REPORT AND RECOMMENDATION

KANDIYOHI COUNTY SHERIFF'S
DEPARTMENT and STEPHANIE, Last
Name Unknown,

Defendants.

Plaintiff Walter Raymond Opiola commenced this action alleging violations of his civil rights by the defendants. Opiola, a prisoner, did not pay the required filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis* ("IFP"). See ECF No. 2. In an order dated August 19, 2015, this Court ordered Opiola to pay an initial partial filing fee of at least \$27.20 within 20 days, failing which this Court would recommend that this matter be dismissed without prejudice for failure to prosecute. See ECF No. 3 (citing Fed. R. Civ. P. 41(b)); 28 U.S.C. § 1915(b).

That deadline has now passed, and Opiola has not paid the required filing fee. In fact, Opiola has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS
HEREBY RECOMMENDED THAT:

1. This action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. Plaintiff Walter Raymond Opiola's application to proceed *in forma pauperis* [ECF No. 2] be DENIED AS MOOT.

Dated: September 17, 2015

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.